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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52

[FAR Case 2014-015; Docket No. 2014-0015; Sequence No. 1]

RIN: 9000-AM92

**Federal Acquisition Regulation; Consolidation and Bundling
of Contract Requirements**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement sections of the Small Business Jobs Act of 2010 and regulatory changes made by the Small Business Administration, which provide for a Governmentwide policy on the consolidation and bundling of contract requirements.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[Insert 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2014-015 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2014-015". Select the link "Comment Now" that corresponds with "FAR Case 2014-015." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2014-015" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, N.W., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014-015, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2014-015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule which was published in the Federal Register at 78 FR 61113 on October 2, 2013, concerning contract consolidation and bundling. SBA's final rule implements the statutory requirements set forth at sections 1312 and 1313 of the Small Business Jobs Act of 2010 (Jobs Act) (Pub. L. 111-240). This proposed rule will encompass the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

Section 1312 of the Jobs Act amends the Small Business Act at 15 U.S.C. 644(q) to require Federal agencies to include in each solicitation for any multiple-award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business teaming arrangements or joint ventures of small business concerns. Section 1312 requires the FAR be amended to establish a Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, and to require agencies to publish said policy on their agency website. Section 1312 also requires the head of the Federal agency to publish on the website of the Federal agency a list and rationale for any bundled contract for

which the Federal agency solicited bids or that was awarded by the agency.

Section 1313 amends the Small Business Act at 15 U.S.C. 657q to define the term "consolidation of contract requirements" to mean the use of a solicitation to obtain offers for a single contract or a multiple-award contract to satisfy two or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which the offers are solicited. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (2013 NDAA), Pub. L. 112-239, section 1671 further amended the definition of consolidation to include construction requirements.

Further, section 1313 prohibits the agency from carrying out an acquisition strategy that includes consolidation of contract requirements of the Federal agency with an estimated total value exceeding \$2 million, unless the Senior Procurement Executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

- Conducts market research;

- Identifies any alternative contracting approach that would involve a lesser degree of consolidation of contract requirements;
- Makes a written determination that the consolidation of contract requirements is necessary and justified;
- Identifies any negative impact by the acquisition strategy on contracting with small business concerns; and
- Ensures that steps will be taken to include small business concerns in the acquisition strategy.

II. Discussion and Analysis.

Amendments to the FAR are proposed by this rule. The proposed changes are summarized in the following paragraphs.

A. FAR Subpart 2.1, Definitions. This subpart is amended to revise the definition of "bundling" for clarity, incorporating the definition of "bundled contract", and to add a new definition for "consolidation, consolidation of contract requirements, consolidated contract or consolidated requirement". In keeping with SBA's final rule and section 1671 of the NDAA for FY 2013, Pub. L. 112-239, the latter definition also encompasses the consolidation of construction requirements. This subpart is also amended to add a definition for "small business teaming arrangement".

B. FAR Subpart 5.2, Synopses of Proposed Contract Actions. A conforming cross-reference has been added at FAR 5.205(g).

C. FAR Subpart 7.1, Acquisition Plans.

- FAR 7.103 - This section is amended to clarify that agencies are to ensure that unnecessary and unjustified consolidation is avoided.

- FAR 7.104 - This section is amended to remove the substantial bundling thresholds at FAR 7.104. The substantial bundling thresholds are relocated to the proposed new section FAR 7.107-4, Substantial Bundling, for clarity and consistency with the new proposed structure of FAR 7.107. An additional revision was made to clarify that small business is to be a discipline that is represented in the acquisition planning team.

- FAR 7.105 - This section is amended by adding a reference to the statutory authority for limiting the use of acquisition strategies involving the consolidation of contract requirements.

- FAR 7.107 - This section is amended by revising the title of the section and adding the statutory authority for the consolidation of contract requirements. This section also proposes to clarify that if a requirement is considered both consolidated and bundled, the agency must follow the guidance regarding bundling. In addition, this

section is amended by restructuring FAR 7.107 to add proposed subsections FAR 7.707-1, General, FAR 7.107-2, Consolidation of contract requirements, FAR 7.107-3 Bundling, FAR 7.107-4 Substantial Bundling, FAR 7.107-5 Notifications, and 7.107-6 Solicitation provision. The proposed revisions are as follows:

- o FAR 7.107-1 - General. This proposed new section provides information relevant to both consolidation and bundling, such as evaluation of benefits, substantial benefits, and applicability.
- o FAR 7.107-2 - Consolidation of contract requirements. This proposed new section is added to clarify that an agency may not conduct an acquisition exceeding \$2 million that is a consolidation of contract requirements unless the agency's Senior Procurement Executive or Chief Acquisition Officer: (1) justifies the consolidation by showing that the benefits of the consolidated acquisition substantially exceed the benefits of each possible alternative approach that would involve a lesser degree of consolidation and (2) identify any negative impact by the acquisition strategy on contracting with small business concerns.

- o FAR 7.107-3 - Bundling. This proposed new section clarifies language regarding the requirements a contracting officer must adhere to prior to conducting an acquisition strategy that involves the bundling of contract requirements.
- o FAR 7.107-4 Substantial Bundling. This proposed new section includes the substantial bundling thresholds relocated from FAR 7.104(d) and existing documentation requirements.
- o FAR 7.107-5 Notifications. This proposed new section is added to require Federal agencies to:
 - (1) notify current small business contractors of an agency's intent to bundle a contract requirement that was not previously bundled at least 30 days prior to the issuance of the solicitation;
 - (2) provide public notification of an agency's intent to bundle by publishing on the agency's website a list and rationale for any bundled requirement for which the agency solicited offers or issued an award;
 - (3) require the agency to notify SBA of a follow-on bundled or consolidated contract requirement; and
 - (4) publish the Governmentwide policy regarding contract bundling, including regarding the solicitation of

teaming and joint ventures, on their agency website.

- o FAR 7.107-6 Solicitation Provision. This proposed new section is added to prescribe a new provision 52.207-XX "Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)", in solicitations for multiple-award contracts that are estimated to be above the agency's substantial bundling threshold.

D. FAR Subpart 8.4, Federal Supply Schedules.

Proposed revisions to FAR 8.404(c)(2) are necessary to apply consolidation requirements to orders.

E. FAR Part 10, Market Research. Proposed revisions to FAR 10.001 are necessary to add references to the statutory authority for the consolidation of contract requirements.

F. FAR Subpart 12.3, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.

Proposed revisions to FAR 12.301(d)(4) are necessary to add a reference to the new provision for multiple-award contracts over the substantial bundling thresholds at FAR 52.207-XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts).

G. FAR Subpart 15.3, Source Selection.

- FAR 15.304, Evaluation factors and significant subfactors. This section is amended by adding references to the consolidation of contract requirements.

H. FAR Subpart 16.5, Indefinite-Delivery Contracts.

- FAR 16.505, Ordering. This section is amended to apply consolidation requirements to orders.

- FAR 16.506, Solicitation provisions and contract clauses. This section is amended by adding a cross-reference to the prescription in FAR Subpart 7.1 for a new provision "Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)".

I. Subpart 19.2, Policies.

- FAR 19.201 General policy and 19.202-1 Encouraging small business participation in acquisitions. These sections are amended by adding references to the consolidation of contract requirements.

J. FAR Subpart 52.2, Text of Provisions and Clauses.

- FAR 52.207-XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts). This section is amended to include this provision in solicitations for multiple-award contracts when the estimated contract value is expected to exceed the agency's substantial bundling

threshold. The agency shall consider offers from any responsible source, including responsible small business concerns and teaming arrangements or joint ventures of small business concerns.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to provide uniform guidance consistent with SBA's final rule

which was published in the Federal Register at 78 FR 61113 on October 2, 2013, which implements sections 1312 and 1313 of the Small Business Jobs Act of 2010, Pub. L. 111-240.

The objective of this proposed rule is to alleviate the adverse effects of contract bundling and consolidation on small business concerns competing for Federal contracts. This rule provides a balance between the benefits of bundling and consolidation and the obstacles they create for small businesses. The authorizing legislation for this action is sections 1312 and 1313 of the Small Business Jobs Act of 2010, Pub. L. 111-240, and section 1671 of the NDAA for FY 2013 Pub. L. 112-239. Section 1671 in conjunction with section 1313 now provides for a Governmentwide requirement and threshold for consolidated contracts.

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. Analysis of the System for Award Management (SAM) database indicates there are over 351,203 small business registrants that can potentially benefit from the implementation of this rule.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014-015), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2, 5, 7, 8, 10, 12,
15, 16, 19, and 52**

Government procurement.

Dated: May 28, 2015.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by—

- a. Removing the definition “Bundled contract”;
- b. Revising the definition “Bundling”;
- c. Adding, in alphabetical order, the definitions “Consolidation, consolidation of contract requirements, consolidated contract, or consolidated requirement”; and “Small Business Teaming Arrangement”.

The revised and added text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Bundling or bundled contract—

(1) Means the consolidating or combining of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract, a multiple-award

contract, a task order or delivery order that is likely to be unsuitable for award to a small business concern (but may be suitable for award to a small business with a Small Business Teaming Arrangement) due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) "Separate smaller contract" as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

(4) (See 7.107-4 for a description of substantial bundling.)

* * * * *

Consolidation, consolidation of contract requirements, consolidated contract, or consolidated requirement—

(1) Means a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy—

(i) Two or more requirements of the Federal agency for supplies or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited; or

(ii) Requirements of the Federal agency for construction projects to be performed at two or more discrete sites.

(2) Separate contract as used in this definition, means a contract that has been performed by any business, including small and other than small business concerns.

* * * * *

Small Business Teaming Arrangement—

(1) Means an arrangement where—

(i) Two or more small business concerns have formed a joint venture; or

(ii) A potential small business prime contractor ("offeror") agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small

business subcontractor(s) exists through a written agreement between the parties that—

(A) Is specifically referred to as a Small Business Teaming Arrangement or Small Business Teaming Agreement; and

(B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition; and

(2) May include two business concerns in a mentor-protégé relationship so long as both the mentor and the protégé are small or the protégé is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h) (3) (ii) or (iii).

(3) See 13 CFR 121.103(b) (9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Amend section 5.205 by adding paragraph (g) to read as follows:

5.205 Special situations.

* * * * *

(g) Notification to public of rationale for bundled requirement. See 7.107-5(b) (2) with regard to notification

to FedBizOpps.gov before issuance of the solicitation of any bundled requirement.

PART 7—ACQUISITION PLANNING

4. Amend section 7.103 by revising paragraph (u) (2) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(u) * * *

(2) Avoid unnecessary and unjustified consolidation or bundling of contract requirements that precludes small business participation as prime contractors (see 7.107) (15 U.S.C. 631(j) and 15 U.S.C. 657(q)).

* * * * *

5. Amend section 7.104 by removing from paragraph (a) "contracting," and adding "contracting, small business," in its place; and revising paragraph (d) to read as follows:

7.104 General procedures.

* * * * *

(d) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts for substantial bundling unless the contract or task order or delivery order is entirely reserved or set-aside for small business under part 19. The small business specialist shall notify the agency Office of Small

and Disadvantaged Business Utilization or the Office of Small Business Programs if the strategy involves consolidation or bundling that is unnecessary, unjustified, or not identified as consolidated or bundled by the agency (see 7.107 for further guidance regarding consolidation and bundling).

* * * * *

6. Amend section 7.105 by revising paragraph (b) (1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) Plan of action. (1) Sources. (i) Indicate the prospective sources of supplies or services that can meet the need.

(ii) Consider required sources of supplies or services (see part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/>.

(iii) Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19).

(iv) Consider the impact of any consolidation or bundling that might affect participation of small businesses in the acquisition (see 7.107) (15 U.S.C. 644(e) and 15 U.S.C. 657(q)). When the proposed acquisition strategy involves the consolidation or bundling of contract requirements, identify the incumbent contractors and contracts affected by the consolidation or bundling.

(v) Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

7. Revise section 7.107 to read as follows:

7.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

7.107-1 General.

(a) Consolidation and bundling of contract requirements may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the agency shall conduct market research and any required analysis to determine whether consolidation is necessary and justified in accordance with 15 U.S.C. 657(q) or if bundling is necessary and justified pursuant to 15 U.S.C. 644(e)(2).

(b) A consolidated or bundled requirement is necessary and justified if the benefits of the acquisition

strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified

(c) Such benefits may include—

- (1) Cost savings;
- (2) Price reduction;
- (3) Quality improvements that will save time or improve or enhance performance or efficiency;
- (4) Reduction in acquisition cycle times, or
- (5) Better terms and conditions.

(d) Benefits are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to—

(1) Ten percent of the estimated contract or order value (including options) if the value is \$94 million or less; or

(2) Five percent of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.

(e) Reduction of administrative or personnel costs alone is not sufficient justification for consolidation or bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the consolidated or bundled requirements. For consolidated requirements, the Senior Procurement Executive or Chief Acquisition Officer must

make a determination of the cost savings (15 U.S.C. 657(q) (c) (2)).

(f) If the requirement is considered both consolidated and bundled, the agency shall follow the guidance regarding bundling in 7.107-3 and 7.107-4).

(g) The requirements of this section do not apply—

(1) Except 7.107-4, if a cost comparison analysis will be performed in accordance with OMB Circular A-76; and

(2) To orders against single-agency task-order contracts or delivery-order contracts, if the requirement was considered in determining that the consolidation or bundling of the underlying contract was necessary and justified.

7.107-2 Consolidation of contract requirements.

(a) Before conducting an acquisition that is a consolidation of contract requirements with an estimated total dollar value exceeding \$2 million, the Senior Procurement Executive or Chief Acquisition Officer shall make a written determination that the consolidation of contract requirements is necessary and justified, after ensuring that—

(1) Market research has been conducted;

(2) Any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements have been identified;

(3) The determination is coordinated with the agency's Office of Small Disadvantaged Business Utilization or the Office of Small Business Programs;

(4) Any negative impact by the acquisition strategy on contracting with small business concerns has been identified; and

(5) Steps are taken to include small business concerns in the acquisition strategy.

(b) The Senior Procurement Executive or Chief Acquisition Officer may determine that the consolidation of contract requirements is necessary and justified if, as compared to the benefits that would be derived from the alternative contracting approaches identified under paragraph (a)(2) of this subsection, consolidation would derive substantial benefits (see 7.107-1(d)).

(c) If a determination is made, the contracting officer shall include it in the acquisition strategy documentation and provide it to SBA upon request.

7.107-3 Bundling.

(a) Before conducting an acquisition strategy that involves the bundling of contract requirements, the agency shall make a written determination that the bundling is necessary and justified. A bundled requirement is considered necessary and justified if the agency would obtain measurably substantial benefits as compared to

meeting its agency's requirements through separate smaller contracts or orders.

(b) The agency shall quantify the specific benefits identified through the use of market research and other techniques to explain how their impact would be measurably substantial (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(c) Without power of delegation, the service acquisition executive for the military departments, the component acquisition executive for the Defense Logistics Agency, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—

(1) The expected benefits do not meet the thresholds for a substantial benefit but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) In assessing whether cost savings and/or price reduction would be achieved through bundling, the agency and SBA shall—

(1) Compare the price that has been charged by small businesses for the work that they have performed; or

(2) Where previous prices are not available, compare the price, based on market research, that could have been or could be charged by small businesses for the work ~~not~~ previously performed by other than a small business.

(e) If a determination is made, the contracting officer shall include it in the acquisition strategy documentation and provide it to SBA upon request.

7.107-4 Substantial bundling.

(a)(1) Substantial bundling is any bundling that results in a contract or order with an estimated value of—

(i) \$8 million or more for the Department of Defense;

(ii) \$6 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; or

(iii) \$2.5 million or more for all other agencies.

(2) These thresholds apply to the cumulative estimated dollar value (including options) of—

(i) Multiple-award contracts;

(ii) Task orders or delivery orders issued against a GSA Schedule contract; or

(iii) Task orders or delivery orders issued against a task-order or delivery-order contract awarded by another agency.

(b) In addition to addressing the requirements for bundling (see 7.107-3), when the proposed acquisition strategy involves substantial bundling, the agency shall document in its strategy—

(1) The specific benefits anticipated to be derived from substantial bundling;

(2) An assessment of the specific impediments to participation by small business concerns as contractors that result from substantial bundling;

(3) Actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) The determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

7.107-5 Notifications.

(a) Notifications to current small business contractors of agency's intent to bundle.

(1) The contracting officer shall notify each small business performing a contract that it intends to bundle the requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled requirement.

(2) The notification shall provide the name, phone number and address of the applicable SBA procurement center representative (PCR), or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located (see subpart 19.4 regarding the duties and responsibilities of the SBA PCR).

(3) This notification shall be documented in the contract file.

(b) Notification to public of rationale for bundled requirement.

(1) The agency shall publish on its website a list and rationale for any bundled requirement for which the agency solicited offers or issued an award. The notification shall be made within 30 days of the agency's data certification regarding the validity and verification

of data entered in the Federal Procurement Data System to the Office of Federal Procurement Policy (see 4.604).

(2) In addition, the agency is encouraged to provide to FedBizOpps.gov, before issuance of the solicitation, notification of the rationale for any bundled requirement (see 5.201).

(c) Notification to SBA of follow-on bundled or consolidated requirements. For each follow-on bundled or consolidated contract (even if additional requirements have been added or some have been deleted), the contracting officer shall obtain from the requiring activity and notify the SBA PCR as soon as possible but no later than 30 days prior to issuance of the solicitation of—

(1) The amount of savings and benefits achieved under the prior consolidation or bundling of contract requirements;

(2) Whether such savings and benefits will continue to be realized if the contract remains consolidated or bundled; and

(3) Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(d) Public notification of bundling policy. In accordance with 15 U.S.C. 644(q)(2)(A)(ii), agencies shall

publish the Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, on their agency website.

7.107-6 Solicitation provision.

The contracting officer shall insert the provision at 52.207-XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), in solicitations for multiple-award contracts above the substantial bundling threshold of the agency.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. Amend section 8.404 by revising paragraph (c) (2) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(c) * * *

(2) Shall comply with all FAR requirements for a consolidated or bundled contract when the task order or delivery order meets the definition at 2.101(b) of "consolidation" or "bundling"; and

* * * * *

PART 10—MARKET RESEARCH

9. Amend section 10.001 by—

a. Removing from the introductory text of paragraph (a) "Agencies must—" and adding "Agencies shall—" in its place;

b. Revising paragraphs (a) (2) (iv) and (a) (2) (vi) (B);

c. Removing from the end of paragraph (a) (3) (v) "efficiency; and" and adding "efficiency;" in its place;

d. Redesignating paragraphs (a) (3) (vi) and (a) (3) (vii) as paragraphs (a) (3) (vii) and (a) (3) (viii), respectively;

e. Adding a new paragraph (a) (3) (vi);

f. Revising the newly designated paragraph (a) (3) (vii); and

g. Revising paragraph (c) to read as follows.

10.001 Policy.

(a) * * *

(2) * * *

(iv) Before soliciting offers for acquisitions that could lead to a consolidated or bundled contract (15 U.S.C. 644(e) (2) (A) and 15 U.S.C. 657q);

* * * * *

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

(3) * * *

(vi) Determine whether consolidation is necessary and justified (see 7.107-2) (15 U.S.C. 657q);

(vii) Determine whether bundling is necessary and justified (see 7.107-3) (15 U.S.C. 644(e) (2) (A)); and

* * * * *

(c) If an agency contemplates awarding a consolidated or bundled contract, the agency—

(1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) Shall notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107-5(a)).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

10. Amend section 12.301 by redesignating paragraphs (d) (3) through (d) (6) as paragraphs (d) (4) through (d) (7), respectively; and adding a new paragraph (d) (3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the provision at 52.207-XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), as prescribed at 7.107-6.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

11. Amend section 15.304 by revising paragraphs (c) (3) (ii) and (c) (4) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3) * * *

(ii) For solicitations involving the consolidation of contract requirements or bundling that offer a significant opportunity for subcontracting, the contracting officer shall include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d) (4) (G) (ii)).

* * * * *

(4) For solicitations involving the consolidation of contract requirements or bundling that offer a

significant opportunity for subcontracting, the contracting officer shall include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

* * * * *

PART 16—TYPES OF CONTRACTS

12. Amend section 16.505 by revising paragraph (a)(8)(iii) to read as follows:

16.505 Ordering.

(a) * * *

(8) * * *

(iii) Shall comply with all FAR requirements for a consolidated or bundled contract when the task order or delivery order meets the definition at 2.101(b) of "consolidation" or "bundling".

* * * * *

13. Amend section 16.506 by adding paragraph (i) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(i) See 7.107-6 for use of 52.207-XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangement or Joint Ventures (Multiple-Award Contracts) in solicitations for multiple-award contracts above the substantial bundling threshold of the agency.

PART 19—SMALL BUSINESS PROGRAMS

14. Amend section 19.201 by revising paragraphs (c) (5) (i), (c) (11) (ii), and (c) (11) (iii) to read as follows:

19.201 General policy.

* * * * *

(c) * * *

(5) * * *

(i) Identify proposed solicitations that involve significant bundling and work with the agency acquisition officials and SBA to revise the procurement strategies for such proposed solicitations to increase the probability of participation by small businesses as prime contractors through Small Business Teaming Arrangements;

* * * * *

(11) * * *

(ii) Adequacy of consolidated or bundled contract documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified consolidation of contract requirements or contract bundling on small businesses.

* * * * *

15. Amend section 19.202-1 by revising paragraphs (e) (1) (iii), (e) (2), (e) (2) (v), (e) (3), and (e) (4) to read as follows:

19.202-1 Encouraging small business participation in acquisitions.

* * * * *

(e) (1) * * *

(iii) The proposed acquisition is for a consolidated or bundled requirement. (See 7.107-5(a) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification for the consolidation of contract requirements or contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107-4. The contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

(2) Provide a statement explaining why the-

* * * * *

(v) The consolidation of contract requirements or bundling is necessary and justified.

(3) Process the 30-day notification concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation made in accordance with 19.402(c) (2), document the basis for the

rejection and notify the SBA procurement center representative in accordance with 19.505.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Add section 52.207-XX to read as follows:

52.207-XX Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts) .

As prescribed in 7.107-6, insert the following provision:

SOLICITATION OF OFFERS FROM SMALL BUSINESS CONCERNS AND SMALL BUSINESS TEAMING ARRANGEMENTS OR JOINT VENTURES (MULTIPLE-AWARD CONTRACTS) (DATE)

(a) Definition. Small Business Teaming Arrangement, as used in this provision—

(1) Means an arrangement where—

(i) Two or more small business concerns have formed a joint venture; or

(ii) A potential small business prime contractor (“offeror”) agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small business subcontractor(s) exists through a written agreement between the parties that—

(A) Is specifically referred to as a “Small Business Teaming Arrangement” or “Small Business Teaming Agreement”; and

(B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition; and

(2) May include two business concerns in a mentor-protégé relationship so long as both the mentor and the protégé are small or the protégé is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h) (3) (ii) or (iii).

(3) See 13 CFR 121.103(b)(9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements.

(b) The Government is soliciting and will consider offers from any responsible source, including responsible small business concerns and offers from Small Business Teaming Arrangements or joint ventures of small business concerns.

(End of provision)

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